

## **JOINT STATEMENT OF THE 24<sup>th</sup> MEETING OF THE WORLD SEMICONDUCTOR COUNCIL (WSC)**

**August 26<sup>th</sup>, 2020  
Virtual**

The world's leading semiconductor industry associations – consisting of the Semiconductor Industry Associations in China, Chinese Taipei, Europe, Japan, Korea, and the United States – held the 24<sup>th</sup> meeting of the World Semiconductor Council (WSC) today through a video conference.

The meeting was chaired by Mr. Mark Liu of Taiwan Semiconductor Manufacturing Company (TSMC) and chair of the host delegation, the Semiconductor Industry Association in Chinese Taipei. The other delegations attending the 24<sup>th</sup> WSC meeting – Semiconductor Industry Associations in China, Europe, Japan, Korea, and the US – were chaired, respectively, by Mr. Zhao Haijun of Semiconductor Manufacturing International Corporation, Mr. Jean-Marc Chéry of STMicroelectronics, Mr. Masaki Momodomi of KIOXIA Corporation, Mr. Chang Han KIM of Samsung Electronics, and Mr. Keith Jackson of ON Semiconductor.

The WSC meets annually to bring together industry leaders to address issues of global concern to the semiconductor industry. The WSC's mandate is to encourage cooperation to promote fair competition, open trade, protection of intellectual property, technological advancement, investment liberalization, market development, and sound environmental, health and safety practices. The WSC also supports expanding the global market for information technology products and services.

Established under the “Agreement Establishing a New World Semiconductor Council” signed on June 10, 1999, and amended on May 19, 2005, the WSC has the goal of promoting cooperative global semiconductor industry activities in order to facilitate the healthy growth of the industry from a long-term global perspective. This Agreement states, “the increasing globalisation of the semiconductor industry raises important issues that must be addressed effectively through international cooperation within the world semiconductor industry”, and that “the WSC activities . . . shall be guided by

principle of fairness, respect for market principles, and consistency with WTO rules and with the laws of the respective countries or regions of each Member. The WSC recognizes that it is important to ensure that markets will be open without discrimination. The competitiveness of companies and their products should be the principal determinant of industrial success and international trade.”

The WSC seeks policies and regulatory frameworks that fuel innovation, propel business, and drive international competition and avoid any actions that distort markets and disrupt trade. Antitrust counsel was present throughout the meeting. During the meeting, the below reports were given and discussed, and related actions were approved.

## **I. Semiconductor Market Data**

The WSC reviewed the semiconductor market report covering global market size, market growth, and other key industry trends. According to WSTS data, in 2019, the global semiconductor market totaled US\$412.3B in revenue and down year-over-year by 12.0 percent. Logic was the largest semiconductor category by sales with \$106.5 billion. Memory (\$106.4 billion) and micro-ICs (\$66.4 billion) - a category that includes microprocessors - rounded out the top three product categories in terms of total sales. Only positive-growing product categories in 2019 included optoelectronics (9.5%) and discrete semiconductors (0.7%).

Annual sales decline across all regions: the Americas (-23.7%), China (-8.8%), Europe (-7.4%), Japan (-10.0%), and other Asia Pacific (-8.8%). Semiconductor applications were still led by communication (33.0%) and computer (28.5%). Forward looking, automotive applications is expected be the driving force, and AI is expected to be widely employed in various fields.

Uncertainty in the international trade environment may affect the development of semiconductor market. It is particularly important to build an open and shared environment.

## **II. Impact from Covid-19**

The semiconductor industry is comprised of a complex and sophisticated global supply chain that thrives on international collaboration and free cross-border exchange of goods, ideas, and people. This approach has driven

efficiency, productivity, rapid technological innovation, and economic growth for all WSC members.

This year, our industry has experienced challenges and difficulties imposed by the COVID-19 global pandemic. Facing these unprecedented challenges, the industry maintained close cooperation and took necessary steps to ensure the continued operation of essential semiconductor facilities, which support other essential products and infrastructure.

**The WSC urges the GAMS to recognize the industry's calls by prioritizing essential semiconductor supply chain operations and allowing the business travel of essential semiconductor workers during the COVID-19 global pandemic (See Annex 1). Accordingly, the WSC also calls on GAMS to continue to strengthen communication and cooperation with the aim to sustain the development of the global semiconductor supply chain.**

### ***III. Cooperative Approaches in Protecting the Global Environment***

The WSC is firmly committed to sound and positive environmental policies and practices. The members of the WSC are proactively working together to make further progress in this area.

#### ***(1) PFC (Perfluorocompound) Emissions***

The global semiconductor industry is a very minor contributor to overall emissions of greenhouse gases, and the industry is continuously working to further reduce our contribution to emissions of GHGs. One important part of our GHG emission reduction efforts is our voluntary reduction of PFC gas emissions. In 1999, the WSC (consisting at that time of each of the original regional semiconductor associations in the U.S., the European Union, Japan, Korea, and Chinese Taipei) agreed to reduce PFC emissions by at least 10% below individual baselines for each regional semiconductor association by the end of 2010. The WSC has previously announced that the industry had far surpassed this goal. Over the 10-year period, the WSC has achieved a 32% reduction. In 2011, the WSC (consisting of the five regional semiconductor associations in the 1999 agreement, with the addition of SIA in China) also announced a new voluntary PFC agreement for the next 10 years. The elements of the 2020 goal include the following:

- The implementation of best practices for new semiconductor fabs. The industry expects that the implementation of best practices will result in a Normalized Emission Rate (NER) in 2020 of 0.22 KgCO<sub>2</sub>e/cm<sup>2</sup> equivalent to a 30% NER reduction from 2010 aggregated baseline. Best practices will be continuously reviewed and updated by the WSC.
- The addition of “Rest of World” fabs (fabs located outside the WSC regions that are operated by a company from a WSC association) in reporting of emissions and the implementation of best practices for new fabs.
- A NER based measurement in kilograms of carbon equivalents per area of silicon wafers processed (KgCO<sub>2</sub>e/cm<sup>2</sup>) that will be a single WSC goal at the global level.

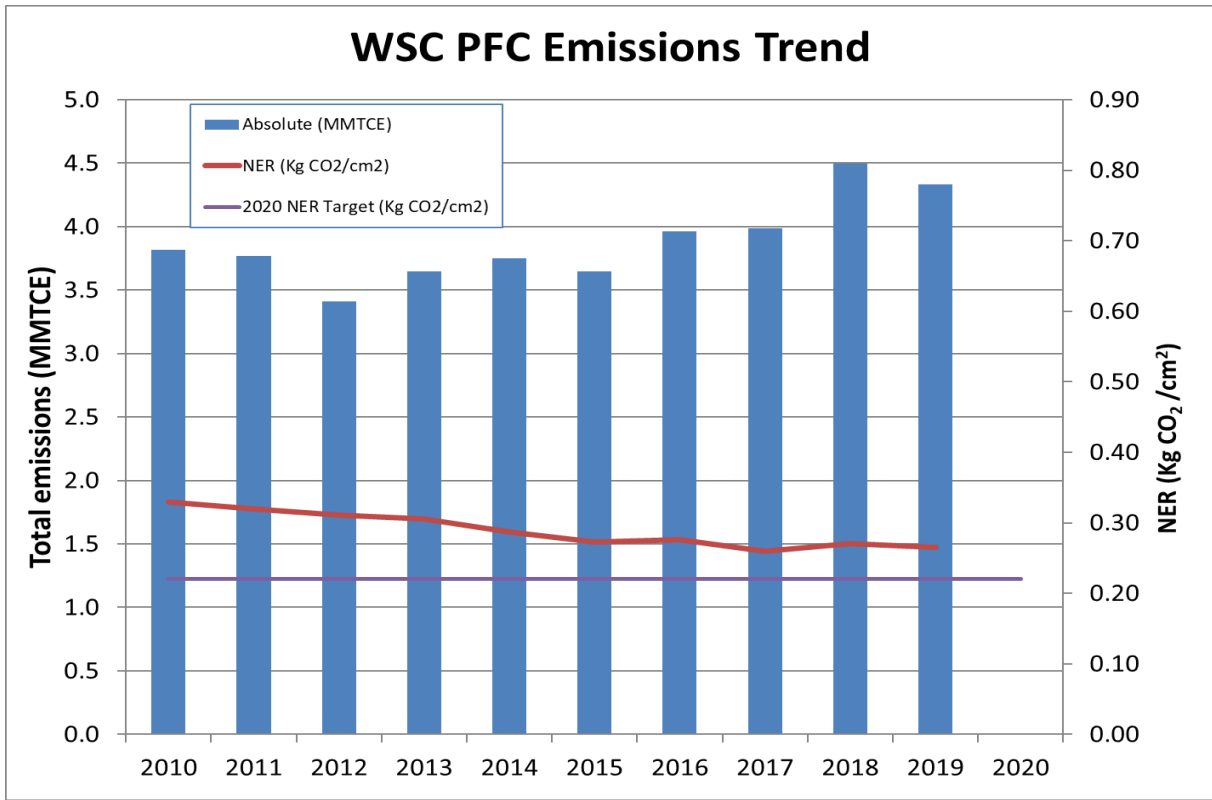
The WSC agreed to report its progress on this new voluntary agreement on an annual basis. This external reporting will provide aggregated results of the absolute PFC consumption and emissions alongside each other and NER trends. These figures represent combined emissions for the six WSC regional associations, in their own regions and in the “Rest of World” fabs described above. In addition, to improve transparency, the WSC has made its Best Practices for PFC Reduction document available previously on the WSC website. In 2017 the WSC has also revised its best practices document and published this update on the WSC website. The 2016 reporting also includes the reporting of newly used gases CH<sub>2</sub>F<sub>2</sub>, C<sub>4</sub>F<sub>6</sub>, C<sub>5</sub>F<sub>8</sub> and C<sub>4</sub>F<sub>8</sub>O. In addition, the WSC reports the individual gas breakdowns.

The 2019 results are as follows: The normalized emission rate decreased by 19.6% compared to 2010 and decreased 2% below 2018. The combined WSC absolute emissions of PFCs increased by 13.5% above 2010 to 4.3 MMTCE<sup>1</sup> in 2019 which is a 3.7 % decrease below 2018 levels. Please see the graph below, which compares these results to 0.22KgCO<sub>2</sub>/cm<sup>2</sup> equivalent to a 30% NER reduction expectation by 2020.

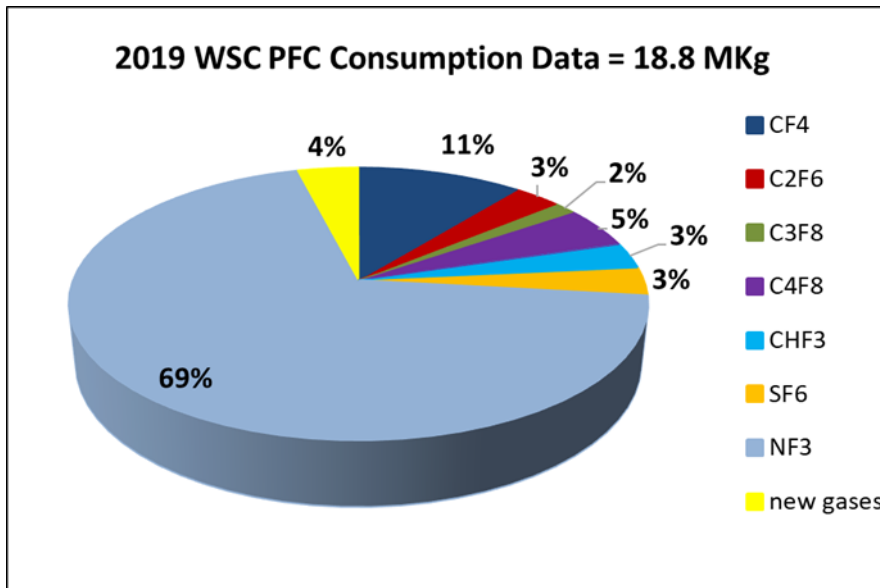
---

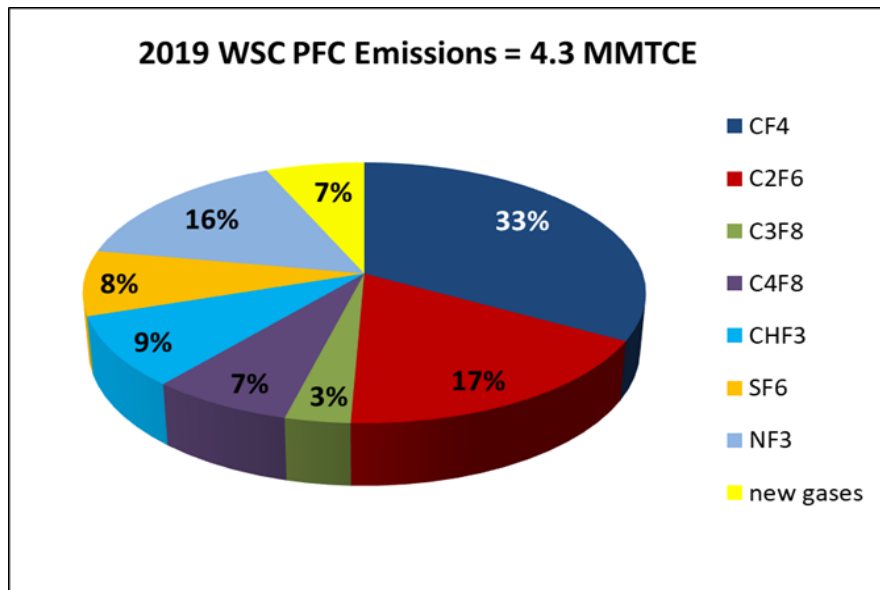
<sup>1</sup> MMTCE – Million Metric Tonnes of Carbon Equivalent

## Results of WSC PFC Emission Trends



## 2019 WSC PFC Consumption and Emissions Data





The WSC observes the overall trends in managing and reducing normalized PFC emissions in the semiconductor industry. We note, however, that achieving these reductions is becoming increasingly challenging due to a number of factors. These factors include: increased manufacturing process complexity, which sometimes requires the use of additional and different gases; the addition of new gases (e.g., CH<sub>2</sub>F<sub>2</sub>, C<sub>4</sub>F<sub>6</sub>, C<sub>5</sub>F<sub>8</sub> and C<sub>4</sub>F<sub>8</sub>O), which represents in 2019 about 7% of WSC emissions; and different measurement and reporting methods, such as the updated reporting regulations in the U.S.

## ***(2) Safety and Health***

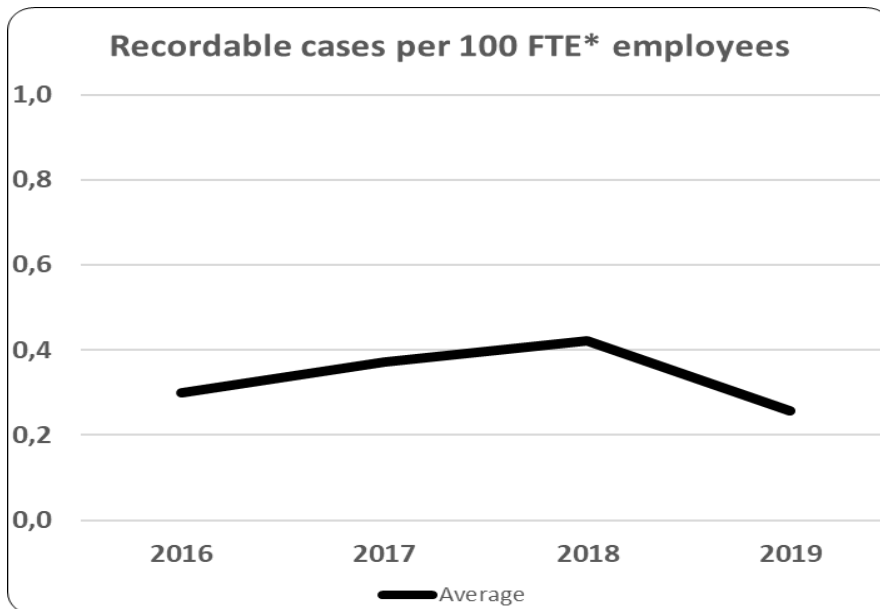
The WSC is focussed on a sound proactive approach to safety and health (S&H) policies and practices, including the provision of a workplace environment that is safe and healthy for all employees.

Collecting S&H data is a typical tool which semiconductor companies use to review and manage their activities and in order to identify learnings for continuous improvement of safety and health practices. Additionally, the WSC is sharing S&H semiconductor best practices in expert settings, to advance industry practices as a whole.

At the WSC level, five associations have contributed to S&H aggregated data. The aggregated work-related injury rate during the last four years 2016-2019 has typically been in the range of less than 0.5 injuries per 100 full time employees (FTE) annually (*figure 1 below*). The days away from work rate has

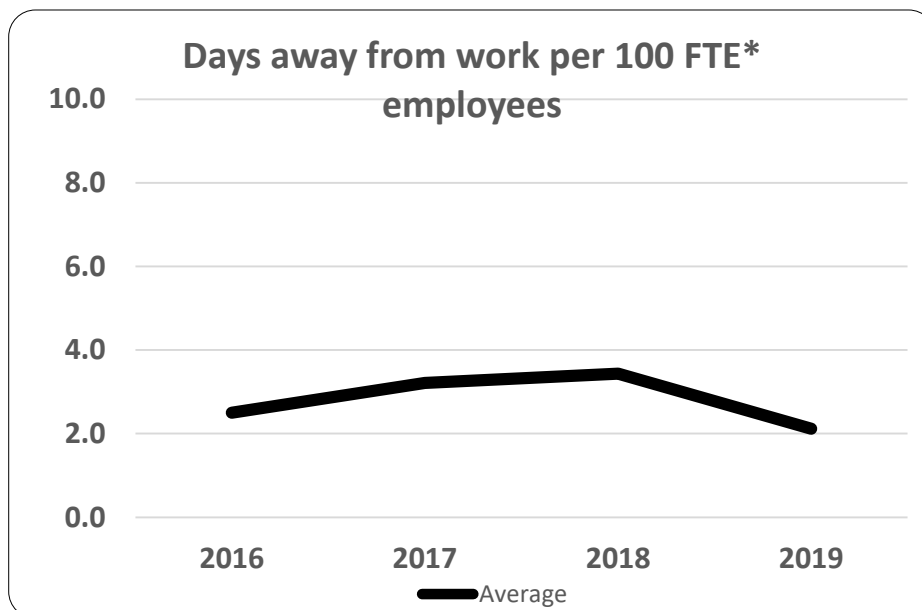
typically been in the range of 2-4 days per 100 full time employees (FTE) annually in this 4-year period (*figure 2 below*). Semiconductor Industry Association in Japan has not contributed to this data. The data remains stable over the period of collection.

**Figure 1. Safety & Health: Recordable Cases**



Recordable case rate = total recordable cases / FTE \* 100  
 \*Total full-time employee (FTE) = total working hours/2000

**Figure 2. Safety & Health: Days Away from Work**



Severity Rate = days away from work case / FTE \* 100  
 \*Total full-time employee (FTE) = total working hours/2000

### ***(3) Chemical Management***

The WSC remains concerned about potential chemical regulatory approaches that may have a disproportionate impact on semiconductor manufacturing. The WSC recommends that Governments/Authorities proceed carefully in regulating chemicals that are essential to the semiconductor industry. The WSC notes that Governments/Authorities continue to prepare new legislation for per- and polyfluoroalkyl substances (PFAS). The use of PFAS compounds remains critical for semiconductor manufacturing. The WSC recommends that Governments/Authorities take into account the limited potential risk of exposure from uses in the semiconductor industry and the chemical management practices in the semiconductor industry. The WSC recommends that any regulations provide the semiconductor industry with sufficient time to evaluate our uses of chemicals and the uses within our supply chain. If restrictions on chemicals used in our industry are deemed to be necessary and appropriate for the protection of human health and the environment, the WSC recommends that Governments/Authorities provide sufficient time for the industry to identify, qualify, and transition to alternative chemicals that satisfy our functional and performance requirements, and be provided with exemptions to allow continuation of critical uses of these chemicals in processes and articles.

### ***(4) Resource Conservation***

Semiconductor devices contribute to improved resource conservation in our world. Energy efficiency enabling semiconductors play a key role in the more efficient transmission, distribution and consumption of energy which also largely contributes to world's carbon emission reduction, contributing to humankind's achieving the United Nation's carbon reduction goal under the global climate change risk mitigation.

Traditional forms of energy and renewable energy sources will not be sufficient alone to meet the world's future energy needs. Consuming energy more efficiently is therefore of paramount importance, and semiconductor devices help achieve this goal. Semiconductor devices enable a more efficient use of energy in all aspects of our daily lives: in the home, office or on the road;



in industrial manufacturing; in public infrastructure; and in public transport. The semiconductor sector itself is not a large natural resource consumer amongst global industries. However, the WSC's members continue to focus activity on reducing the use of resources involved in the device manufacturing processes to reduce the direct impacts to the local and global environment. The semiconductor sector will continue to pursue environmental conservation programs in its fabs in the areas of energy, water and waste and the industry will continue to share examples of improvement practices.

#### **IV. Effective Protection of Intellectual Property**

##### **A. Patent Quality**

In recognition of the importance of improving patent quality, the WSC has been working with WIPO and the patent offices of GAMS members to encourage the collection and dissemination of standardized statistical metrics bearing on patent examination quality. The WSC commends WIPO for its efforts to collect and publish meaningful metrics bearing on patent quality across jurisdictions and encourages WIPO to continue and expand this effort. The WSC encourages broadening this cooperative relationship to explore potential collaboration on data collection on other important IP topics such as for trade secrets. **The WSC appreciates the GAMS's recent reiteration of support for the WSC's efforts to improve patent quality.**

##### **B. Abusive Patent Litigation (NPEs/PAEs)**

The WSC recognizes that abusive patent litigation seriously undermines innovation by redirecting resources to unnecessary litigation expenses, and by making it more difficult to bring products to market. Additionally, based on the results of a survey the WSC recently conducted among its members (see Annex 2) to evaluate the implementation of the WSC Best Practices to Combat Abusive Patent Litigation as set forth in Annex 2 to the 2017 WSC Joint Statement, the WSC notes that not all regions have fully implemented these Best Practices. Some examples of remaining concerns include: the way that permanent injunctions are granted, as well as requirements for plaintiffs to provide evidence that they can pay fee-shifting costs.

**The WSC encourages GAMS to support the WSC best practices to combat abusive patent litigation.**

### **C. Trade Secrets**

Trade secret theft impedes continued semiconductor research and development by reducing the incentive for companies to invest in building the next generation of semiconductors. Given the rapid speed of innovation in the semiconductor industry, trade secret theft can cause a company to lose its competitive advantage and market share. Trade secret theft can be extremely difficult to protect against. The rapid growth of the internet has resulted in companies facing greater threats of trade secret theft. Such threats are magnified due to the critical role of semiconductors in emerging technologies, such as artificial intelligence and the internet of things.

The WSC therefore continues to monitor and study this problem and potential remedies. The WSC strongly supports national legislative initiatives to improve the protection of trade secrets, and **urges GAMS to adopt strong trade secret protections in trade agreements and domestic laws. The WSC reiterates its encouragement, first stated in the 2015 WSC Joint Statement, for GAMS to support the WSC “Core Elements for Trade Secret Protection Legislation.”**

In addition to legislative measures and enforcement, trade secret protection can be enhanced via the establishment of Corporate Compliance and Ethics programs (CEPs) by technology companies to discourage employees from illegally misappropriating trade secrets. **The WSC also recommends that GAMS utilize laws, policy directives, trade agreements, and other means to encourage companies to implement Compliance and Ethics Programs that protect trade secrets.**

### **D. Utility Models**

The WSC has strongly supported improvements to national utility model (UM) laws to bring legal certainty and predictability to UM right holders and product developers and manufacturers worldwide. In some jurisdictions, UM patents provide the same or similar rights as utility or invention patents, but have a lower standard of patentability. This results in protection for inventions with a lower level of inventiveness. In some jurisdictions, UM patents may be asserted before a validity determination, shifting the burden of proof and cost to the alleged infringer to prove invalidity.

In recognition of these concerns, in 2014 the WSC issued a call for improvements to national utility model laws in its “Recommendations for Improvements to National Utility Model Laws”. That paper is attached to this Joint Statement, and **the WSC urges governments and authorities to support these recommendations.** Improvements in utility model laws will ensure an accelerated grant framework as well as legitimacy of the system in many countries and regions, thereby protecting semiconductor investments, avoiding needless litigation, and promoting further innovation.

The WSC takes notice of statistics published by WIPO in its annual report *World Intellectual Property Indicators 2019*, which shows a dramatic increase last year in utility model applications worldwide, in excess of 20 percent from the prior year. The WSC is monitoring this trend closely, **and calls on the GAMS to also take note of this trend and monitor any resultant increase in litigation related to utility models.**

#### **E. TRIPS 25th Anniversary**

**The WSC continues to call on all Governments and Authorities to implement effective IP enforcement measures in their jurisdictions.** Additionally, WSC activities continue to be guided by principles of fairness and respect for market principles consistent with the World Trade Organization (WTO) rules and with the laws of the respective countries or regions of each WSC member association. In that spirit, the WSC notes that this year marks the 25th Anniversary of the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The WSC continues to support international cooperation in the protection of intellectual property and **recommends that GAMS continue to prioritize the protection of intellectual property.**

### **V. Encryption Certification & Licensing Regulations**

The semiconductor industry is the foundation for nearly all modern technologies. Semiconductor devices with encryption capabilities are essential in securing electronic devices and digital infrastructure in innovation areas including connectivity, IoT, medical devices, Artificial Intelligence, cloud computing, connected vehicles, connected homes and big data. As such, semiconductors and encryption are increasingly ubiquitous.

The WSC welcomes the GAMS' support for the WSC Encryption principles which underscore free market access, transparency and non-discrimination for commercial encryption products, the adoption of international standards, and open procedures and rules in line with WTO commitments. By implementing the WSC Encryption Principles, governments can avoid a negative impact on the industry's competitiveness and prevent unnecessary restrictions to trade.

As highlighted by GAMS, consensus-based international standards adopted through open procedures are the optimal way to achieve robust cryptographic solutions and trusted security technologies containing encryption. The WSC notes that the prior GAMS workshop on Encryption was held on October 16, 2019. The WSC recognizes the important progress made by GAMS to date in analysing and assessing encryption measures and regulatory practices in GAMS' regions against the WSC Encryption principles. This progress has led to increased transparency and greater understanding of each region's practices and policies.

Based on concerns expressed by WSC members during the prior Encryption Workshop, the WSC would like to emphasize the following: 1) The WSC Encryption Principles should apply to all commercial applications which use cryptography; and 2) certification should be in line with international standards, with accredited international laboratories allowed to issue certificates, and the certificates recognised domestically.

**The WSC welcomes the GAMS work recognizing the need for further study of some encryption measures. WSC calls on GAMS to continue the dialogue to further enhance understanding of encryption regulatory practices and complete the analysis and assessment of these measures with respect to conformity to the WSC Encryption Principles, by the upcoming GAMS meeting and workshop in October 2020. To support this process the WSC presents a proposal for draft agenda of the workshop. (See Annex 3)**

## ***VI. Customs and Tariffs***

### ***A. Trusted Traders***

The semiconductor industry relies on a unique and global manufacturing ecosystem. A typical semiconductor device will cross international borders many times during the production process, making the smooth international

movement of goods of vital importance to the industry. Trusted trader policies, such as the Authorised Economic Operators' (AEO) programs, aim to bolster smooth, fast and efficient import and export processes while enhancing compliance and supply chain security. As such, our industry has been investing substantially to comply with trusted trader policies, and most semiconductor companies have achieved AEO status, many of them in multiple jurisdictions worldwide.

The WSC welcomes the GAMS' support for enhanced cooperation with customs authorities to strengthen trusted traders' programmes and enhance tangible trade facilitation for trusted traders. The WSC supports the GAMS acknowledgment of the importance of global alignment and further mutual recognition of trusted trader programmes.

In response to the GAMS request, in 2018 the WSC articulated best practices on AEO/Trusted Traders programs. In addition, per GAMS' recommendation, the WSC will organise a separate meeting in 2021 in Brussels, with all Customs agencies from the GAMS regions. The meeting aims to initiate a dialogue on AEO/Trusted Traders between the WSC and Customs administrations on how to work to the goal of furthering the WSC Best Practices and foster trade facilitation for AEOs while ensuring an international level playing field. **The WSC calls on GAMS to work with their Customs agencies to ensure Customs officials from all GAMS regions actively and constructively participate in the meeting.**

### **B. Semiconductor-based transducers**

As the WCO approaches its final approval of the 2022 amendments to the HS Nomenclature, the WSC applauds the approval by the World Customs Organisation (WCO) of the semiconductor-based transducers amendment and the further progress in WCO on the corresponding HS Explanatory Note.

**The WSC calls on GAMS to further support this process including the WSC proposal for Explanatory Notes for semiconductor-based transducers and work with their Customs agencies to ensure WCO's approval of the proposal within the HS 2022 review.**

### **C. HS Classification for semiconductors**

The WSC recalls that the HS plays a fundamental role in ensuring a globally uniform and consistent customs classification for all traded goods including semiconductors, which is also creating the condition for a level playing field in international business. In case of diverging classifications in different jurisdictions, clarifications at international level are required.

The WSC is currently reviewing cases of diverging custom classifications for identical semiconductor products in different countries, as well as the classification of new semiconductor products and technologies, and discussing ways how to address these. WSC endeavors to provide more information to GAMS when available.

**D. Implementation, Geographic Expansion, and Review of the Information Technology Agreement (ITA) and ITA expansion**

The WSC highlights the significance of the 2015 ITA expansion in facilitating the free flow of advanced semiconductors products which, like many semiconductors, are the foundational enabling technology for virtually all ICT goods.

The WSC welcomes the invitation by GAMS to provide updates on advances in semiconductor with a view to maintaining duty-free treatment on semiconductors as technology evolves. The WSC supports the continuous update of the ITA product scope to include new and evolving semiconductor technologies, as this would help ensure that the ITA stays up to date and ensure a barrier-free movement of semiconductor-ICT-goods across borders. As a number of semiconductor products are currently not covered by the ITA and ITA expansion, the WSC continues to work on suggestions for future updates to the ITA scope. When Government/Authorities decide to update the ITA, the WSC will stand ready to support the negotiations.

The WSC welcomes the GAMS' call to all ITA members to adopt the ITA-expansion without delay. Broader membership in ITA and ITA expansion will more quickly intensify the benefits of the ITA for all members.

**WSC requests GAMS members to include commitments to join ITA and ITA expansion in trade agreements to which they are parties, including the**

WTO e-commerce initiative currently being negotiated by seventy-six WTO members.

## **VII. Regional Support Programs**

Given the vital role of the semiconductor industry to all regions' economic growth and innovation, combined with the immense technological challenges and rising costs facing our industry, the WSC encourages market-based government support which fosters semiconductor industry progress and is fully consistent with the *GAMS Regional Support Guidelines and Best Practices* and WTO rules.

The WSC welcomes GAMS' support for full implementation of the *Regional Support Guidelines and Best Practices*, developed by the WSC and adopted by the GAMS in 2017. These *Guidelines* reflect the shared view that government support in the semiconductor sector should be transparent, non-discriminatory, and non-trade distorting; that government actions should be guided by market-based principles; and that the competitiveness of companies and their products, not the intervention of governments and authorities, should be the principal driver of innovation, industrial success and international trade.

The WSC welcomes the GAMS' ongoing commitment to increase transparency through regular sharing of information and analysis and assessment of subsidies and other forms of government support. Such transparency and assessment is vital to promoting consistency with the principles of the *Guidelines* and WTO rules, and avoiding non-market-based support that can lead to excess capacity that is not commercially justified, create unfair competitive conditions, hinder innovation, and undermine the efficiency of global value chains. **The WSC recognizes the important progress to date on the analysis and assessment of the 30 programs originally identified ("Phase 1 Information Exchange"), and has provided information, in consultation with their respective GAMS members, on an additional 2 programs per region ("Phase 2 Information Exchange").**

**The WSC requests GAMS to complete the analysis and assessment of these regional support programs with respect to consistency with the Regional Support Guidelines and Best Practices at a 5th Workshop on Regional Support at the 2020 GAMS Meeting. The WSC presents to GAMS a proposal for the workshop agenda, and requests that GAMS members work to finalize an agenda and invite appropriate officials in their regions to participate in this**

**workshop (See Annex 4). The WSC also requests GAMS to continue and review the process of regular exchanges in support of full implementation of the Regional Support Guidelines and Best Practices.**

**The WSC welcomes the October 2018 GAMS agreement to work together to maintain the effectiveness of existing WTO disciplines, as well as to reform the WTO to help it meet new challenges.**

### ***VIII. Fighting the Proliferation of Semiconductor Counterfeiting***

The proliferation of counterfeit semiconductor products creates serious risks to the safety and health of the public and to critical national infrastructure and can have a significant economic impact for semiconductor rights holders. The WSC remains committed to anti-counterfeiting work activities through its Anti-Counterfeiting Task Force. Due to the COVID-19 pandemic, the counterfeit risk is increasing in all industrial sectors including those concerned with medical equipment and protective equipment. As semiconductors are a key component in medical equipment, all manufacturers remain vigilant and avoid counterfeit semiconductors which can have a direct impact on medical equipment.

Counterfeiting threatens the innovation-driven economy which underpin prosperous societies and industry sectors like semiconductor manufacturing. The collision of the online economy and globalization has allowed criminal networks to expand the scope of their operations, free-riding on intellectual property and allowing them to sell counterfeit goods directly worldwide with virtually no barriers to entry, low cost of set up and fewer risks of being caught. The WSC supports pro-active enforcement activities to remove trademark infringing and counterfeit semiconductors from online platforms.

WSC members remain committed to increasing awareness of the infrastructure, public health and safety risks caused by counterfeits. As part of this awareness-raising, the WSC supported the Global Anti-Counterfeiting Group's (GACG) World Anti-Counterfeiting Day on June 10, 2020 which highlighted the problems and risks caused by counterfeits. (See Annex 5)

Semiconductors are the "brains" inside critically-important electronic systems, including healthcare and medical equipment, electric power grids, communications systems, automotive braking and airbag systems, and aviation systems. The proliferation of counterfeit semiconductor products creates serious



risks to the safety and health of the public including electrical fires in consumer goods, inaccurate readings by test equipment, malfunctions of vehicle safety equipment, or system crashes to critical national infrastructure. The WSC has shared examples of anti-counterfeiting capacity building measures and practices that could be employed across the semiconductor industry and has circulated widely the WSC's updated White Paper "Winning the Battle against Counterfeit Semiconductor Products", available under "public documents" on the WSC website: <https://www.semiconductorcouncil.org/public-documents/public-documents-and-white-papers/> .

The WSC appreciates the GAMS' commitment to fighting semiconductor counterfeiting. The WSC looks forward to continued coordination with GAMS in stopping counterfeits and will continue to cooperate with GAMS customs and enforcement authorities across all regions of the WSC in these efforts.

**The WSC recommends that GAMS members continue to implement appropriate domestic, bilateral and multilateral IP enforcement countermeasures to deal with counterfeit semiconductors. The WSC supports GAMS coordination with their customs and law enforcement authorities to facilitate a further strengthening of IP enforcement activities at regional and national levels in cooperation with industry.**

## ***IX. Responsible Minerals Sourcing***

The global semiconductor industry through the WSC is committed to using 'responsibly sourced' minerals in their semiconductor products. In 2018, the WSC broadened its original Conflict-Free Supply Chain Policy of 2013 to a responsible sourcing of minerals policy and referenced the deep concerns about the sources of minerals from 'conflict-affected and high-risk areas' (CAHRA). This update emphasized the importance of supply chains acting responsibly to source minerals and agreed that the WSC will promote the 'OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas' among its members to do this. The OECD guidance serves as a common reference for all stakeholders in the mineral supply chain in order to clarify expectations concerning the nature of responsible supply chain management of minerals from conflict-affected and high-risk areas.

The global semiconductor industry is a recognized leader in addressing the issues related to the sourcing of minerals. The semiconductor industry has

been involved in the development of compliance tools such as the OECD due diligence guidance framework that have been readily adopted by other key industry sectors and has implemented state of the art programs to track progress. The industry's activities to source minerals responsibly continues with efforts to move beyond the original Democratic Republic of Congo and surrounding countries and the tin, tantalum, tungsten and gold (3TG) scope.

**The WSC would recommend that if GAMS members are considering new responsible minerals sourcing type of legislation, that the legislation should be globally aligned to ensure that such legislations promote the harmonization of global efforts for creating responsible supply chain management of minerals from conflict-affected and high-risk areas and should utilize existing compliance tools such as the OECD due diligence guidance framework and initiatives such as the Responsible Minerals Initiative and be based on voluntary principles.**

#### ***X. Approval of Joint Statement and Approval of Recommendations to GAMS***

The results of today's meeting will be submitted by representatives of WSC members to their respective governments/authorities for consideration at the annual meeting of WSC representatives with the Governments/Authorities Meeting on Semiconductors (GAMS) to be held in October 2020 in Barcelona, Spain.

#### ***XI. Next Meeting***

The next meeting of the WSC will be hosted by the Semiconductor Industry Association in Chinese Taipei and will take place in Taipei City on May 20, 2021.

#### ***XII. Key Documents and WSC Website:***

All key documents related to the WSC can be found on the WSC website, located at: <http://www.semiconductorcouncil.org>

Information on WSC member associations can be found on the following websites:

**Semiconductor Industry Association in China:**

<http://www.csia.net.cn>

**Semiconductor Industry Association in Chinese Taipei:**

<http://www.tsia.org.tw>

**Semiconductor Industry Association in Europe:**

<http://www.eusemiconductors.eu>

**Semiconductor Industry Association in Japan:**

<http://semicon.jeita.or.jp/en/>

**Semiconductor Industry Association in Korea:**

<http://www.ksia.or.kr>

**Semiconductor Industry Association in the US:**

<http://www.semiconductors.org>

**Annexes:**

- 1. Global Semiconductor Industry Calls on Nations to Facilitate Essential Travel by Essential Workers During COVID-19**
- 2. WSC Survey Results of Abusive Patent Litigation**
- 3. Proposed Agenda for GAMS Workshope on Encryption**
- 4. Proposed Agenda for 5<sup>th</sup> GAMS Workshop on Regional Support**
- 5. WSC Press Release: WSC supports World Anti-Counterfeiting Day**



## Global Semiconductor Industry Calls on Nations to Facilitate Essential Travel by Essential Workers During COVID-19

The undersigned associations express our gratitude to governments around the world that have designated the semiconductor and microelectronics industry essential during their response to the COVID-19 pandemic, allowing continued operation of key manufacturing and operational functions within safety protocols. By designating semiconductor and microelectronics industry workers “essential,” governments have contributed significantly to the industry’s ability to continue to produce and deliver critical components for every nation’s essential infrastructure and life-critical equipment such as health care and medical devices, water systems and the energy grid, transportation and communication networks, and the financial system.

As nations take steps toward returning to business conditions prior to the pandemic, **we call on all governments to provide accommodations for and harmonize policies to safely allow essential international travel for essential workers.** Cross-border mobility in the semiconductor and microelectronics industry is vital to maintain critical manufacturing operations producing devices that are the foundation of our modern economy, countless economic sectors and each nation’s response to this pandemic. Microelectronics produced in global supply chains enable the medical technology, cloud computing, and remote working capabilities that are invaluable to efforts to defeat this pandemic and more quickly recover.

Global supply chains require cross-border travel by key technical personnel and business continuity decision-makers to ensure that essential industry manufacturing and operations remain effective. While the industry continues to implement safety protocols and minimize non-essential travel, incredibly sophisticated equipment sets and materials usage from a variety of different nations will at times require specialized expertise that is not present in-country. For example, technicians from a semiconductor manufacturing equipment company typically must travel to semiconductor factories in other countries to install or repair specialized tools in situations that are beyond the expertise of the local field office and too complicated to handle by video conference. Similarly, at times

semiconductor-based solutions, such as cloud computing, must be implemented or optimized on-site for the equipment to achieve full capacity.

We call on governments around the world to safely allow such essential travel for essential workers to ensure that this essential industry can maintain key manufacturing production and operations.

American Malaysian Chamber of Commerce (AmCham Malaysia), Semiconductor Industry Association in China (CSIA), Semiconductor Industry Association in EU (ESIA), Semiconductor Industry Association in Japan (JSIA), Semiconductor Industry Association in Korea (KSIA), Semiconductor & Electronics Industries in the Philippines Foundation, Inc. (SEIPI), SEMI, Semiconductor Industry Association in U.S. (SIA), Singapore Semiconductor Industry Association (SSIA), Semiconductor Industry Association in Chinese Taipei (TSIA)

---

June 1, 2020

## WSC Survey Results of Abusive Patent Litigation

|  | <b>China</b>   |
|--|--|
| <b>Does your country/region have, or planning to have, practices in place to ensure that damages and/or a permanent injunction is not granted before both infringement and invalidity proceedings on a patent are concluded?</b>   | <p>“Provisions of The Supreme People's Court on Several Issues Concerning the Application of Law in Reviewing the Injunction Cases Involving Intellectual Property Disputes”<br/>Article 9<br/>Where an applicant applies for act preservation on the basis of a utility model or a design patent right, it shall submit a search report, a patent right evaluation report made by the patent administration department under the State Council, or a decision of the Patent Reexamination Board to maintain the patent right. If the applicant refuses to submit without justifiable reasons, the people's court shall decide to reject the application.<br/><a href="http://www.court.gov.cn/zixun-xiangqing-135341.html">http://www.court.gov.cn/zixun-xiangqing-135341.html</a></p>  |
| <b>Does your country/region have, or planning to have, practices in place to ensure that injunctions should not be granted unless the plaintiff can show that it will suffer irreparable injury, the remedies available at law are inadequate to compensate for that injury, the balance of hardship between the parties favors the grant of an injunction, and the public interest would not be disserved?</b>  | <p>“Provisions of The Supreme People's Court on Several Issues Concerning the Application of Law in Reviewing the Injunction Cases Involving Intellectual Property Disputes”<br/>Article 7<br/>(1) Whether the applicant's request has factual and a legal basis, including whether the intellectual property right of the claimed protection is stable;<br/>(2) Whether the failure to take act preservation measures will cause irreparable damage to the applicant's legitimate rights and interests or cause the case to be difficult to enforce, etc.;<br/>(3) Whether the damage caused by the failure to take act preservation measures exceeds the damage caused to the respondent by taking act preservation measures;<br/>(4) Whether taking act preservation measures harms the public interest;<br/>(5) Other factors that should be considered.<br/><a href="http://www.court.gov.cn/zixun-xiangqing-135341.html">http://www.court.gov.cn/zixun-xiangqing-135341.html</a></p> |
| <b>Does your country/region have, or planning to have, practices in place to prevent abuses in which plaintiffs “forum shop” to select “patentee-friendly” courts in which the plaintiff is more likely to ultimately prevail or at least obtain a preliminary injunction. Such initiatives may include, where practicable and effective, establishing courts with specialized patent expertise or addressing inequalities in venue selection that lead to abusive “forum shopping.”</b> | <p>Civil Procedure Law of the People's Republic of China<br/>Article 28 A lawsuit brought by an infringement shall be under the jurisdiction of the people's court of the place where the infringement is committed or the defendant's domicile.<br/><a href="http://www.spp.gov.cn/sscx/201502/t20150217_91465.shtml">http://www.spp.gov.cn/sscx/201502/t20150217_91465.shtml</a></p>   |
| <b>Does your country/region have, or planning to have, practices in place to ensure that, in addition to encouraging fee shifting, require up front bonds or alternatively provide for other sufficient evidence to ensure the plaintiff could pay fee shifting costs should they apply?</b>   | <p>Litigation Fee Payment Method<br/>Article 29 The costs of litigation shall be borne by the losing party, unless the winning party voluntarily undertakes.<br/><a href="http://www.gov.cn/zwggk/2006-12/29/content_483407.htm">http://www.gov.cn/zwggk/2006-12/29/content_483407.htm</a></p>   |

|  |   |
|--|---|
| <p><b>Does your country/region have, or planning to have, practices in place that provide a fair, speedy, and cost-efficient means to challenge patent validity, such as the use of inter partes review (IPR) or other post-grant review procedures?</b></p>   | <p>Patent Law of People’ s Republic of China<br/>Article 45 From the day when the patent administration department of the State Council announces the grant of a patent right, any unit or individual who believes that the grant of the patent right does not comply with the relevant provisions of this Law may request the Patent Reexamination Board to declare the patent right invalid<br/><a href="http://www.gov.cn/flfg/2008-12/28/content_1189755.htm">http://www.gov.cn/flfg/2008-12/28/content_1189755.htm</a></p> |
| <p><b>Does your country/region have, or planning to have, practices in place that require publication of nonconfidential copies of pleadings and opinions, with a process for redacting any sensitive and/or confidential information belonging to the parties?</b></p>  | <p>Not applicable or not available</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage lawfully permissible collaboration among defendants being sued by the same plaintiff under the same patent, e.g., under a joint defense agreement, to ensure that the best defense possible is developed?</b></p>  | <p>Not applicable or not available</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that require the disclosure of the appropriately defined real parties-in-interest in litigation (see, e.g., WSC 2014 Joint Statement recommendation for greater patent ownership transparency in lawsuits)?</b></p>   | <p>Not applicable or not available</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage case management procedures to address discovery burden and cost asymmetries in NPE/PAE litigation (see, e.g., WSC 2014 Joint Statement recommendation to implement appropriate revisions and limits to discovery procedures)?</b></p>  | <p>Not applicable or not available</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that provide procedures to challenge the “plausibility” of pleadings in patent cases and to ensure that patent infringement complaints provide sufficient notice to accused infringers (see, e.g., WSC 2014 Joint Statement recommendation for heightened pleading requirements for patent lawsuits)?</b></p> | <p>Not applicable or not available</p>  |

|   | <b>Chinese Taipei</b>   |
|---|---|
| <p><b>Does your country/region have, or planning to have, practices in place to ensure that damages and/or a permanent injunction is not granted before both infringement and invalidity proceedings on a patent are concluded?</b></p>   | <p>Yes, in Taiwan, the claim of patent infringement is judged by civil lawsuit. According to Article 96 of the Taiwan Patent Act, if a patent infringement is confirmed, the damage can be made or/and the infringement should be stopped. There is a specialized Intellectual Property Court (IP court) in Taiwan. According to Article 3 of the Intellectual Property Court Organization Act, the first and second trials of patent litigation are judged by the IP Court. Only after the IP court hears and confirms the infringement, a damage award or permanent injunction will be decided by the judge. Further, in accordance with Article 16 of the Intellectual Property Case Adjudication Act, when the accused party claims or defends that the patent right should be cancelled or revoked during the court proceeding, the IP court can decide the validity of the patent based on the merit of the case. Therefore, the IP judge needs not to stay the litigation for the invalidation result.</p> <p>For patent invalidation, the request for invalidation of a patent can be filed with the Taiwan Intellectual Property Office (TIPO). However, TIPO will only re-examine decide the validity of the patent. The infringement case will be only decided by the IP Court.</p> <p>* Article 96 of the Taiwan Patent Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070007">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070007</a></p> <p>* Article 3 of the Intellectual Property Court Organization Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010090">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010090</a></p> <p>*Article 16 of the Intellectual Property Case Adjudication Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215</a></p> |
| <p><b>Does your country/region have, or planning to have, practices in place to ensure that injunctions should not be granted unless the plaintiff can show that it will suffer irreparable injury, the remedies available at law are inadequate to compensate for that injury, the balance of hardship between the parties favors the grant of an injunction, and the public interest would not be disserved?</b></p>  | <p>Yes, according to Article 22(II) of the Intellectual Property Case Adjudication Act, the applicant seeking a preliminary injunction shall provide a preliminary showing proving it is necessary to prevent material harm or imminent danger or other similar circumstances with regard to the legal relation in dispute. The court shall dismiss the application if the preliminary showing is insufficient. In Taiwan, the court would not easily grant preliminary injunction unless there is sufficient reason. Further, for patent cases, if the validity of patent is highly uncertain, it is very rare the judge would grant such injunction.</p> <p>*Article 22 of the Intellectual Property Case Adjudication Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215</a></p>   |
| <p><b>Does your country/region have, or planning to have, practices in place to prevent abuses in which plaintiffs “forum shop” to select “patentee-friendly” courts in which the plaintiff is more likely to ultimately prevail or at least obtain a preliminary injunction. Such initiatives may include, where practicable and effective, establishing courts with specialized patent expertise or addressing inequalities in venue selection that lead to abusive “forum shopping.”</b></p> | <p>As replied in Question 1, Taiwan has a specialized IP Court for patent disputes. The IP court is in New Taipei City and there is only one IP Court. Therefore, there is no such forum-shopping concern in Taiwan. Even if the lawsuit is filed with other district court, the district court judge will transfer the case to the IP court once the judge finds the case is related to patent dispute(s).</p> <p>* The TW Intellectual Property Court Organization Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010090">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010090</a></p>   |
| <p><b>Does your country/region have, or planning to have, practices in place to ensure that, in addition to encouraging fee shifting, require up front bonds or alternatively provide for other sufficient evidence to ensure the plaintiff could pay fee shifting costs should they apply?</b></p>   | <p>A plaintiff is not generally required to pay any front bonds to the court. But according to Article 96 of Taiwan code of Civil Procedure, if the plaintiff has no domicile, office, or place of business in the Taiwan, by the defendant’s request, the court may grant the request and request the plaintiff to provide a security for the litigation expenses. In addition, according to Article 78-94 of Taiwan code of Civil Procedure, who should bear the litigation expenses are defined. In short, according to Article 78, the losing party shall bear the litigation expenses.</p> <p>* Article 78-94 and 96 of TW Taiwan code of Civil Procedure<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001</a></p>   |



|   |  |
|---|--|
| <p><b>Does your country/region have, or planning to have, practices in place that provide a fair, speedy, and cost-efficient means to challenge patent validity, such as the use of inter partes review (IPR) or other post-grant review procedures?</b></p>  | <p>As mentioned in our reply in Question 1, patent infringement litigation and the patent invalidating proceeding are independent.</p> <p>For patent infringement court proceeding, the judge can determine if the patent is valid or not on the merit independently, without staying the case for TIPO's decision. Further, the judge of the Taiwan IP court will set up the trial scheme for each case for trial efficiency.</p> <p>For the invalidation proceedings, TIPO also enhances the efficiency by revising the Patent Act. Based on the revised Patent Act, which becomes effective from Nov. 1, 2019, the time limit for filing supplemental argument or evidence is further limited. (Revised Article 73, 74 and 77) to acceleration the invalidation proceeding. In addition, when filing the invalidation request, if the patent is also involved in litigation, the requestor can file a request for acceleration examination of the invalidation case by fulfilling TIPO's application form.</p> <p>Therefore, either the validity of patent is questioned in IP Court or with the TIPO, it would be reviewed efficiently.</p> <p>*Trial Scheme of TW IP Court:<br/> <a href="http://ipc.judicial.gov.tw/ipr_english/index.php?option=com_content&amp;view=article&amp;id=97&amp;Itemid=100006">http://ipc.judicial.gov.tw/ipr_english/index.php?option=com_content&amp;view=article&amp;id=97&amp;Itemid=100006</a><br/> * Article 73, 74 and 77 of the Taiwan Patent Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070007">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0070007</a></p> |
| <p><b>Does your country/region have, or planning to have, practices in place that require publication of nonconfidential copies of pleadings and opinions, with a process for redacting any sensitive and/or confidential information belonging to the parties?</b></p>   | <p>In Taiwan, according to the Article 86 and 87 of the Court Organization Act, the trial shall be open to the public unless a private trial is requested and granted. In other words, anyone can attend an open court. However, only the written court decision will be published after the final decision is made, while the file wrapper of the litigation case will be accessed by both parties. For confidential information, according to Article 9 of the Intellectual Property Case Adjudication Act, both parties can request to hold the trial in private if the trade secrets of either parties or the third party may be involved. Further, according to Articles 11-15 of the Intellectual Property Case Adjudication Act, a secret protective order can be requested to keep secret information in confidential. For confidential information, either party can request the judge to redact the parts from publication.</p> <p>*Articles 86 and 87 of the Court Organization Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010053">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010053</a><br/> *Articles 9, and 11-15 of the Intellectual Property Case Adjudication Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215</a></p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage lawfully permissible collaboration among defendants being sued by the same plaintiff under the same patent, e.g., under a joint defense agreement, to ensure that the best defense possible is developed?</b></p>                     | <p>Not applicable. In Taiwan, it would be initially the plaintiff's choices. He/she can decide to sue each defendant independently or sue multiple defendants in one case. According to Article 53-57 of Taiwan code of Civil Procedure, two or more persons may sue or be sued as co-parties if there are common rights or obligations under certain conditions. Moreover, it is also the defendants' consideration if they would like to assign the same attorney(s) to represent them for collaborative work</p> <p>* Articles 53-57 of TW Taiwan code of Civil Procedure<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001</a></p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that require the disclosure of the appropriately defined real parties-in-interest in litigation (see, e.g., WSC 2014 Joint Statement recommendation for greater patent ownership transparency in lawsuits)?</b></p>                                  | <p>Not applicable. In Taiwan practice, there is no such requirement to disclose the real parties-in-interest.</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage case management procedures to address discovery burden and cost asymmetries in NPE/PAE litigation (see, e.g., WSC 2014 Joint Statement recommendation to implement appropriate revisions and limits to discovery procedures)?</b></p> | <p>It would depend on the case and the judge's consideration of the facts. In Taiwan court procedure, there is no discovery proceeding like in US and therefore the discovery burden is limited. Both parties bear the burden of proof for litigation and the judge can make further investigation or ask for further records or information if there is any need. In addition, according to Article 10 of the Intellectual Property Case Adjudication Act, the penalty may be imposed if the holder of a document or object for inspection refuses to comply with the court's</p>   |

|  |  |
|--|--|
|  | <p>request. The court can further then issue an enforcement order to access the document or object for inspection.</p> <p>*Article 10 of the Intellectual Property Case Adjudication Act<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030215</a></p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that provide procedures to challenge the “plausibility” of pleadings in patent cases and to ensure that patent infringement complaints provide sufficient notice to accused infringers (see, e.g., WSC 2014 Joint Statement recommendation for heightened pleading requirements for patent lawsuits)?</b></p> | <p>Not available. It would be mainly decided by the judge of the IP Court. According to Article 249 of Taiwan code of Civil Procedure, if the plaintiff ‘s claim for the facts that he/she alleges is manifestly without legal grounds, the court may, without oral argument, issue a judgment dismissing the action with prejudice and also make a fine. For patent litigation, as long as the plaintiff could provide prima facie evidence or facts, the judge will then review the case by the trial proceeding.</p> <p>* Article 249 of TW Taiwan code of Civil Procedure<br/> <a href="https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001">https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001</a></p> |

|  | <b>Europe</b>  |
|--|--|
| <b>Does your country/region have, or planning to have, practices in place to ensure that damages and/or a permanent injunction is not granted before both infringement and invalidity proceedings on a patent are concluded?</b>   | <p>Yes, a counterclaim for revocation is a standard defence to an infringement action.</p> <p>Article 33 UPCA --- Competence of the divisions of the Court of First Instance</p> <p>(3) A counterclaim for revocation [Article 32(1)(e)] may be brought in the case of an action for infringement [Article 32(1)(a)]. The local or regional division concerned shall, after having heard the parties, have the discretion either to:</p> <p>(a) proceed with both the action for infringement and with the counterclaim for revocation and request the President of the Court of First Instance to allocate [...] a technically qualified judge with qualifications and experience in the field of technology concerned.</p> <p>(b) refer the counterclaim for revocation for decision to the central division and suspend or proceed with the action for infringement; or</p> <p>(c) with the agreement of the parties, refer the case for decision to the central division.</p>  |
| <b>Does your country/region have, or planning to have, practices in place to ensure that injunctions should not be granted unless the plaintiff can show that it will suffer irreparable injury, the remedies available at law are inadequate to compensate for that injury, the balance of hardship between the parties favors the grant of an injunction, and the public interest would not be disserved?</b>  | <p>Yes, a potential harm resulting from an injunction will be considered.</p> <p>Article 62 UPCA --- Provisional and protective measures</p> <p>(2) The Court shall have the discretion to weigh up the interests of the parties and in particular to take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction.</p> <p>Article 64 UPCA --- Corrective measures in infringement proceedings</p> <p>(4) In considering a request for corrective measures pursuant to this Article, the Court shall take into account the need for proportionality between the seriousness of the infringement and the remedies to be ordered, the willingness of the infringer to convert the materials into a non-infringing state, as well as the interests of third parties.</p>   |
| <b>Does your country/region have, or planning to have, practices in place to prevent abuses in which plaintiffs “forum shop” to select “patentee-friendly” courts in which the plaintiff is more likely to ultimately prevail or at least obtain a preliminary injunction. Such initiatives may include, where practicable and effective, establishing courts with specialized patent expertise or addressing inequalities in venue selection that lead to abusive “forum shopping.”</b> | <p>Forum shopping will be possible (only) at the Court of First Instance of the UPC (Articles 6 and 7 UPCA), as an infringement action can be brought before the local/regional division of any country where the actual or threatened infringement has occurred or may occur, or where the defendant (or one of multiple defendants) has its place of business, see Article 33(1)(a)(b) UPCA.</p> <p>However, a comprehensive set of Rules of Procedure covering every stage of the court procedure --- has been set up and is applicable to every division of the UPC so as to safeguard a uniform application of law already at the Court of First Instance.</p> <p>Ultimately, the UPC system provides a single Court of Appeal (Articles 6 and 9 UPCA), located in Luxembourg. Hence, no forum shopping is possible at the second instance of the UPC.</p>  |
| <b>Does your country/region have, or planning to have, practices in place to ensure that, in addition to encouraging fee shifting, require up front bonds or alternatively provide for other sufficient evidence to ensure the plaintiff could pay fee shifting costs should they apply?</b>   | <p>Yes, measures to request adequate securities and cover cost of successful party are provided for.</p> <p>ARTICLE 60 UPCA --- Order to preserve evidence and to inspect premises</p> <p>(7) The measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 9.</p> <p>[See also Rule 196 RoP.]</p> <p>Article 69 UPCA --- Legal costs</p> <p>(1) Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling set in accordance with the Rules of Procedure.</p> <p>(4) At the request of the defendant, the Court may order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear, in particular in the cases referred to in Articles 59 to 62.</p> |
| <b>Does your country/region have, or planning to have, practices in place that provide a fair, speedy, and cost-efficient means to challenge patent validity, such as the use of inter partes review (IPR) or other post-grant review procedures?</b>  | <p>According to Articles 99 to 101 of the European Patent Convention, an opposition to any European patent granted by the EPO under the EPC may be filed by any member of the public except for the proprietor himself.</p> <p><a href="https://www.epo.org/applying/european/oppositions.html">https://www.epo.org/applying/european/oppositions.html</a></p>   |

|   |  |
|---|--|
| <p><b>Does your country/region have, or planning to have, practices in place that require publication of nonconfidential copies of pleadings and opinions, with a process for redacting any sensitive and/or confidential information belonging to the parties?</b></p>                                       | <p>The UPC Agreement and the Rules of Procedure of the UPC include ample provisions for the protection of confidential information.</p> <p>Article 45 UPCA --- Public proceedings<br/>The proceedings shall be open to the public unless the Court decides to make them confidential, to the extent necessary, in the interest of one of the parties or other affected persons, or in the general interest of justice or public order.</p> <p>Rule 262 RoP --- Public access to the register<br/>1. Without prejudice to Articles 58 and 60(1) UPCA and subject to Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2, written pleadings, written evidence, decisions and orders lodged at or made by the Court and recorded by the Registry shall be available to the public, unless a party has requested that certain information be kept confidential and provided specific reasons for such confidentiality. The Registrar shall ensure that information subject of such a request shall not be made available pending an Application pursuant to paragraph 2 or an appeal pursuant to Rule 220.2. Where a party requests that parts of written pleadings or written evidence shall be kept confidential, he shall also provide copies of the said documents with the relevant parts redacted when making the request.<br/>2. A member of the public may lodge an Application with the Court for an order that any information excluded from public access pursuant to paragraph 1 may be made available to the applicant.<br/>3. The Application shall contain:<br/>(a) details of the information alleged to be confidential, so far as possible;<br/>(b) the grounds upon which the applicant believes the reasons for confidentiality should not be accepted; and<br/>(c) the purpose for which the information is needed.<br/>4. The Court shall invite written comments from the parties prior to making any order.<br/>5. The Court shall allow the Application unless legitimate reasons given by the party concerned for the confidentiality of the information outweigh the interest of the applicant to access such information.</p> <p>Article 23(2) UPCA --- Duties of the Registrar<br/>(d) publishing the decisions of the Court, subject to the protection of confidential information.</p> |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage lawfully permissible collaboration among defendants being sued by the same plaintiff under the same patent, e.g., under a joint defense agreement, to ensure that the best defense possible is developed?</b></p> | <p>Yes, multiple action concerning the same patent can be heard together.</p> <p>Rule 303 RoP --- Plurality of defendants<br/>1. Proceedings may be started against a plurality of defendants if the Court has competence in respect of all of them.<br/>2. The Court may separate the proceedings into two or more separate proceedings against different defendants.<br/>3. Where the Court orders a separation of proceedings under paragraph 2, the claimants in the new proceedings shall pay a new court fee in accordance with Part 6, unless the Court decides otherwise.</p> <p>Rule 340 – Connection Joinder<br/>1. In the interests of the proper administration of justice and of avoiding inconsistent decisions, where more than one action concerning the same patent (whether or not between the same parties) is pending before:<br/>(a) different panels (whether in the same or different divisions); or<br/>(b) different panels of the Court of Appeal,<br/>the panels may by agreement, at any time, after hearing the parties, order that two or more actions shall, on account of the connection between them, be heard together. Article 33 UPCA shall be respected.<br/>2. The actions may subsequently be disjoined.<br/>These Rules imply that different defendants may be joined in one procedure and, thus, should be allowed to collaborate to develop their best common defense against a patent.</p>  |

|  |   |
|--|---|
| <p><b>Does your country/region have, or planning to have, practices in place that require the disclosure of the appropriately defined real parties-in-interest in litigation (see, e.g., WSC 2014 Joint Statement recommendation for greater patent ownership transparency in lawsuits)?</b></p>   | <p>The UPC Agreement and the Rules of Procedure do not require the UPC to investigate whether the parties in litigation are the real parties in interest.<br/> Rule 8 RoP --- Party and party’s representative<br/> 4. For the purposes of proceedings under these Rules in relation to the proprietor of a European patent with unitary effect, the person shown in the Register for unitary patent protection [Regulation (EU) No 1257/2012, Article 2(e)] as the proprietor shall be treated as such. If during proceedings before the Court a new proprietor is recorded in the Register for unitary patent protection, the former registered proprietor may apply to the Court pursuant to Rule 305.1(c) for the substitution of the new proprietor.<br/> In opposition proceedings under Article 99 of the European Patent Convention (EPC), an opposition by a strawman is generally admissible.<br/> <a href="https://www.epo.org/law-practice/legal-texts/html/caselaw/2016/e/clr_iv_d_2_1_4.htm">https://www.epo.org/law-practice/legal-texts/html/caselaw/2016/e/clr_iv_d_2_1_4.htm</a></p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage case management procedures to address discovery burden and cost asymmetries in NPE/PAE litigation (see, e.g., WSC 2014 Joint Statement recommendation to implement appropriate revisions and limits to discovery procedures)?</b></p>  | <p>The European Parliament has been aware of the problem, see e.g. the following Parliamentary Question dated 22 March 2018 and titled “Patent legal system: abusive litigation practices”:<br/> <a href="http://www.europarl.europa.eu/doceo/document/E-8-2018-001759_EN.html">http://www.europarl.europa.eu/doceo/document/E-8-2018-001759_EN.html</a><br/> However, the UPC Agreement includes only general provisions that allow the Court to take account of asymmetric market positions of the parties.<br/> For example:<br/> According to an introductory legislative consideration underlying the UPC Agreement (page 4), the Unified Patent Court should be devised to ensure expeditious and high quality decisions, striking a fair balance between the interests of right holders and other parties and taking into account the need for proportionality and flexibility.<br/> Article 42 UPCA --- Proportionality and fairness<br/> (1) The Court shall deal with litigation in ways which are proportionate to the importance and complexity thereof.<br/> (2) The Court shall ensure that the rules, procedures and remedies provided for in this Agreement and in the Statute are used in a fair and equitable manner and do not distort competition.<br/> Article 62 UPCA --- Provisional and protective measures<br/> (2) The Court shall have the discretion to weigh up the interests of the parties and in particular to take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction.<br/> Article 64 UPCA --- Corrective measures in infringement proceedings<br/> (4) In considering a request for corrective measures pursuant to this Article, the Court shall take into account the need for proportionality between the seriousness of the infringement and the remedies to be ordered, the willingness of the infringer to convert the materials into a non-infringing state, as well as the interests of third parties.</p> |
| <p><b>Does your country/region have, or planning to have, practices in place that provide procedures to challenge the “plausibility” of pleadings in patent cases and to ensure that patent infringement complaints provide sufficient notice to accused infringers (see, e.g., WSC 2014 Joint Statement recommendation for heightened pleading requirements for patent lawsuits)?</b></p> | <p>The UPC is free to assess the plausibility of pleadings and evidence brought before the Court. A plausibility element is implied in Rule 334 RoP - Case management powers, according to which the judge-rapporteur, the presiding judge or the panel may:<br/> (h) dismiss a claim summarily if it has no prospect of succeeding.<br/> The UPC Agreement defines the usual burden of proof which is on the party relying on the facts alleged by it:<br/> Article 54 UPCA --- Burden of proof<br/> Without prejudice to Article 24(2) and (3), the burden of the proof of facts shall be on the party relying on those facts.</p>  |

|  | <b>Japan</b>  |
|--|---|
| <b>Does your country/region have, or planning to have, practices in place to ensure that damages and/or a permanent injunction is not granted before both infringement and invalidity proceedings on a patent are concluded?</b>   | Article 104-3 of the Patent Act<br>(1) Where, in litigation concerning the infringement of a patent right or an exclusive license, the said patent is recognized as one that should be invalidated by a trial for patent invalidation, the rights of the patentee or exclusive licensee may not be exercised against the adverse party.<br><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=42&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=42&amp;vm=04&amp;re=02</a>  |
| <b>Does your country/region have, or planning to have, practices in place to ensure that injunctions should not be granted unless the plaintiff can show that it will suffer irreparable injury, the remedies available at law are inadequate to compensate for that injury, the balance of hardship between the parties favors the grant of an injunction, and the public interest would not be disserved?</b>  | Article 23 of the Civil Provisional Remedies Act<br>(1) An order of provisional disposition with regard to a disputed subject matter may be issued when there is a likelihood that the obligee's exercise of its right will be impossible or extremely difficult due to any changes to the existing state of such subject matter.<br>(2) An order of provisional disposition that determines a provisional status may be issued when such status is necessary in order to avoid any substantial detriment or imminent danger that would occur to the obligee with regard to the relationship of rights in dispute.<br><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=2028&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=2028&amp;vm=04&amp;re=02</a>   |
| <b>Does your country/region have, or planning to have, practices in place to prevent abuses in which plaintiffs "forum shop" to select "patentee-friendly" courts in which the plaintiff is more likely to ultimately prevail or at least obtain a preliminary injunction. Such initiatives may include, where practicable and effective, establishing courts with specialized patent expertise or addressing inequalities in venue selection that lead to abusive "forum shopping."</b> | 1. Article 6 of the Code of Civil Procedure<br>(1) With regard to an action relating to a patent right, utility model right, right of layout-designs of integrated circuits or an author's right over a computer program (hereinafter referred to as an "action relating to a patent right, etc."), if any of the courts listed in the following items shall have jurisdiction pursuant to the provisions of the preceding two Articles, such action shall be subject exclusively to the jurisdiction of the court specified in the respective items:<br>(i) A district court located within the jurisdictional district of the Tokyo High Court, the Nagoya High Court, the Sendai High Court or the Sapporo High Court: The Tokyo District Court<br>(ii) A district court located within the jurisdictional district of the Osaka High Court, the Hiroshima High Court, the Fukuoka High Court or the Takamatsu High Court: The Osaka District Court<br><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02</a> |
| <b>Does your country/region have, or planning to have, practices in place to ensure that, in addition to encouraging fee shifting, require up front bonds or alternatively provide for other sufficient evidence to ensure the plaintiff could pay fee shifting costs should they apply?</b>   | 1. Article 61 of the Code of Civil Procedure<br>A defeated party shall bear court costs.<br>In general, a plaintiff is not required to pay any bond to the court.<br>However;<br>Article 75 of the Code of Civil Procedure<br>(1) If a plaintiff does not have any domicile, business office or other office in Japan, the court, upon the petition of a defendant, shall make an order to the effect that the plaintiff should provide security for court costs. The same shall apply if any deficiency occurs in such security.<br><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02</a>  |
| <b>Does your country/region have, or planning to have, practices in place that provide a fair, speedy, and cost-efficient means to challenge patent validity, such as the use of inter partes review (IPR) or other post-grant review procedures?</b>  | 1. Article 123 of the Patent Act<br>(1) Where a patent falls under any of the following, a request for a trial for patent invalidation may be filed.<br>Article 104-3 of the Patent Act<br>(2) Where, in litigation concerning the infringement of a patent right or an exclusive license, the said patent is recognized as one that should be invalidated by a trial for patent invalidation, the rights of the patentee or exclusive licensee may not be exercised against the adverse party.<br><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=42&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=42&amp;vm=04&amp;re=02</a>  |
| <b>Does your country/region have, or planning to have, practices in place that require publication of nonconfidential copies of pleadings and opinions, with a process for redacting any sensitive and/or confidential information belonging to the parties?</b>   | 1. Article 91 of the Code of Civil Procedure<br>(1) Any person may make a request to a court clerk for the inspection of a case record.<br>Article 92 of the Code of Civil Procedure<br>(2) Where a prima facie showing is made with regard to the following grounds, the court, upon the petition of a party concerned, may, by an order, limit the persons who may make a request for inspection or copying of the part of the case record in which the relevant secret is stated or recorded, issuance of an authenticated copy, transcript or extract of such part or reproduction of such part (hereinafter referred to as "inspection, etc. of the secret part") to the parties.<br><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02</a>   |

|  |   |
|--|---|
| <p><b>Does your country/region have, or planning to have, practices in place that encourage lawfully permissible collaboration among defendants being sued by the same plaintiff under the same patent, e.g., under a joint defense agreement, to ensure that the best defense possible is developed?</b></p>  | <p>1. Article 38 of the Code of Civil Procedure<br/>If rights or obligations that are the subject matter of the suits are common to two or more persons or are based on the same factual or statutory cause, these persons may sue or be sued as co-parties. The same shall apply where rights or obligations that are the subject matter of the suits are of the same kind and based on the same kind of causes in fact or by law.<br/><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=2834&amp;vm=04&amp;re=02</a></p> |
| <p><b>Does your country/region have, or planning to have, practices in place that require the disclosure of the appropriately defined real parties-in-interest in litigation (see, e.g., WSC 2014 Joint Statement recommendation for greater patent ownership transparency in lawsuits)?</b></p>   | <p>1. Article 10 of the Trust Act<br/>No trust may be created for the primary purpose of having another person conduct any procedural act.<br/><a href="http://www.japaneselawtranslation.go.jp/law/detail/?id=1936&amp;vm=04&amp;re=02">http://www.japaneselawtranslation.go.jp/law/detail/?id=1936&amp;vm=04&amp;re=02</a></p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage case management procedures to address discovery burden and cost asymmetries in NPE/PAE litigation (see, e.g., WSC 2014 Joint Statement recommendation to implement appropriate revisions and limits to discovery procedures)?</b></p>  | <p>Since the discovery system in Japan is not as extensive as the system in the United States, the burden of discovery and the costs thereof are relatively minimal.</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that provide procedures to challenge the “plausibility” of pleadings in patent cases and to ensure that patent infringement complaints provide sufficient notice to accused infringers (see, e.g., WSC 2014 Joint Statement recommendation for heightened pleading requirements for patent lawsuits)?</b></p> | <p>1. Article 53 of the Rules of Civil Procedure<br/>(1) A complaint shall contain statements of the object and statement of the claim (meaning the facts necessary for identifying the claim), concrete statements of the cause of action, and statements of material facts related to said cause and evidence for the respective grounds that require proof.<br/><a href="http://www.cas.go.jp/jp/seisaku/hourei/data/rcp.pdf">http://www.cas.go.jp/jp/seisaku/hourei/data/rcp.pdf</a></p>  |

|   | <b>Korea</b>   |
|---|--|
| <p><b>Does your country/region have, or planning to have, practices in place to ensure that damages and/or a permanent injunction is not granted before both infringement and invalidity proceedings on a patent are concluded?</b></p>   | <p>Generally, yes. If a petitioner files an invalidity proceeding with the Korean Intellectual Property Trial and Appeal Board (“KIPTAB”) while an infringement lawsuit involving the same patent is pending before the infringement court, the infringement court generally stays the infringement proceeding until the KIPTAB renders the decision on invalidity. After the KIPTAB renders its decision regarding the invalidity issue, the infringement court then determines the patent infringement issues based on the KIPTAB’s decision. It is rare for civil courts responsible for determining patent infringement issues to (i) continue the infringement proceeding while the parallel invalidity proceeding is pending before the KIPTAB and (ii) independently decide the invalidity issue without regard to the KIPTAB’s decision. In short, because infringement courts often rely on the KIPTAB decisions, damages or permanent injunctions for patent infringement may not be granted before both invalidity and infringement proceedings on the same patent are concluded.</p> <p>However, there may be some exceptions to this general practice. First, although it is rare, infringement courts may choose to grant damages or permanent injunctions before the KIPTAB decisions. Second, even before the infringement case is concluded (i.e., before the final and non-appealable decision is rendered), a patentee-plaintiff may request the court of first instance to provisionally enforce an injunction. In other words, even if the case has been appealed to the Patent Court (the second appellate court) or the Supreme Court (the ultimate appellate court) reviewing the infringement issues, an injunction can be provisionally granted and enforced against alleged infringers.</p> |
| <p><b>Does your country/region have, or planning to have, practices in place to ensure that injunctions should not be granted unless the plaintiff can show that it will suffer irreparable injury, the remedies available at law are inadequate to compensate for that injury, the balance of hardship between the parties favors the grant of an injunction, and the public interest would not be disserved?</b></p>  | <p>Yes, Korea has practices in place to ensure that preliminary injunctions are not granted unless the plaintiff shows certain factors, including (i) whether a patentee faces a substantial threat of irreparable damage or injury, if the preliminary injunction is not granted; and (ii) whether the balance of harms weighs in favor of the patentee (a party seeking the preliminary injunction).</p> <p>In practice, Korean courts are vested with wide discretion in determining whether to grant a preliminary injunction and courts consider various factors, including the above stated factors.</p>   |
| <p><b>Does your country/region have, or planning to have, practices in place to prevent abuses in which plaintiffs “forum shop” to select “patentee-friendly” courts in which the plaintiff is more likely to ultimately prevail or at least obtain a preliminary injunction. Such initiatives may include, where practicable and effective, establishing courts with specialized patent expertise or addressing inequalities in venue selection that lead to abusive “forum shopping.”</b></p> | <p>Yes, there is a practice to prevent abuses of forum shopping by a patentee, as the amended Civil Procedure Act (enforced in January 1, 2016) consolidated the territorial jurisdiction of (i) the first instance of patent litigation to five district courts (i.e., the Seoul Central, Daejeon, Daegu, Busan, and Gwangju district courts, where the Seoul Central District Court has concurrent jurisdiction); and (ii) any appeals therefrom to the Patent Court of Korea.</p>   |
| <p><b>Does your country/region have, or planning to have, practices in place to ensure that, in addition to encouraging fee shifting, require up front bonds or alternatively provide for other sufficient evidence to ensure the plaintiff could pay fee shifting costs should they apply?</b></p>   | <p>No, a plaintiff is not generally required to pay any bond to the court. However, if the plaintiff does not have an address, a business office, or any other place of business in Korea, the court may request the plaintiff to furnish the bond for the litigation costs.</p>   |
| <p><b>Does your country/region have, or planning to have, practices in place that provide a fair, speedy, and cost-efficient means to challenge patent validity, such as the use of inter partes review (IPR) or other post-grant review procedures?</b></p>  | <p>Yes, even before the United States introduced the systems of inter partes review and post grant review, Korea had a system similar to inter partes review, where a petitioner was able to request the KIPTAB to review the validity of a patent.</p> <p>Korean Patent Act, art. 133,<br/> <a href="http://www.law.go.kr/LSW//IsInfoP.do?lsiSeq=192531&amp;chrClsCd=010203&amp;urlMode=engLsInfoR&amp;viewCls=engLsInfoR#0000">http://www.law.go.kr/LSW//IsInfoP.do?lsiSeq=192531&amp;chrClsCd=010203&amp;urlMode=engLsInfoR&amp;viewCls=engLsInfoR#0000</a></p>   |



|  |  |
|--|--|
| <p><b>Does your country/region have, or planning to have, practices in place that require publication of nonconfidential copies of pleadings and opinions, with a process for redacting any sensitive and/or confidential information belonging to the parties?</b></p>  | <p>No, Korean courts generally do not disclose or publish case dockets (including a complaint, a response, preparatory briefs, opinion memoranda) regardless of whether information included therein constitute trade secrets. Instead, courts are able to publish court opinions of certain cases after removing or altering any confidential personal information.</p>   |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage lawfully permissible collaboration among defendants being sued by the same plaintiff under the same patent, e.g., under a joint defense agreement, to ensure that the best defense possible is developed?</b></p>  | <p>If a patentee sues multiple defendants in the patent infringement case, Korean courts neither encourage nor restrict collaboration to build the best defense amongst the defendants.</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that require the disclosure of the appropriately defined real parties-in-interest in litigation (see, e.g., WSC 2014 Joint Statement recommendation for greater patent ownership transparency in lawsuits)?</b></p>   | <p>No, Korea does not have any practice requiring the disclosure of all real parties-in-interest in patent litigation (both preliminary injunction proceedings and the main patent infringement proceedings for determining issues on whether to grant a permanent injunction and/or monetary damages). Courts cannot force any disclosure of all real parties-in-interest, other than patentee-NPEs. However, being an NPE in patent litigation may bring some restrictions: (i) in regard to preliminary injunction proceedings, courts are less likely to find that patentee-NPEs will suffer irreparable harm; and (ii) in regard to main patent infringement proceedings, patentee-NPEs are limited to claim damages of either infringer's profits or ordinary license fees and may not claim damages under other theories of damage calculation.</p>   |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage case management procedures to address discovery burden and cost asymmetries in NPE/PAE litigation (see, e.g., WSC 2014 Joint Statement recommendation to implement appropriate revisions and limits to discovery procedures)?</b></p>  | <p>No. This is because, since the discovery system in Korea is not as extensive as the system in the United States, the burden of discovery and the costs thereof are relatively minimal.</p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that provide procedures to challenge the "plausibility" of pleadings in patent cases and to ensure that patent infringement complaints provide sufficient notice to accused infringers (see, e.g., WSC 2014 Joint Statement recommendation for heightened pleading requirements for patent lawsuits)?</b></p> | <p>Yes, if a complaint does not identify (i) the parties and counsel for the parties; (ii) prayer for relief; and (iii) the grounds for seeking such relief, courts may require the plaintiff to amend the complaint. If the plaintiff fails to amend the complaint, the court may dismiss the complaint at its discretion. However, in practice, this is rarely done. Korean Civil Procedure Act, art. 249, <a href="http://www.law.go.kr/LSW//lsInfoP.do?lsiSeq=198476&amp;chrClsCd=010203&amp;urlMode=engLsInfoR&amp;viewCls=engLsInfoR#0000">http://www.law.go.kr/LSW//lsInfoP.do?lsiSeq=198476&amp;chrClsCd=010203&amp;urlMode=engLsInfoR&amp;viewCls=engLsInfoR#0000</a> Korean Civil Procedure Act, art. 254, <a href="http://www.law.go.kr/LSW//lsInfoP.do?lsiSeq=198476&amp;chrClsCd=010203&amp;urlMode=engLsInfoR&amp;viewCls=engLsInfoR#0000">http://www.law.go.kr/LSW//lsInfoP.do?lsiSeq=198476&amp;chrClsCd=010203&amp;urlMode=engLsInfoR&amp;viewCls=engLsInfoR#0000</a></p> |

|  | <b>US</b>  |
|--|--|
| <b>Does your country/region have, or planning to have, practices in place to ensure that damages and/or a permanent injunction is not granted before both infringement and invalidity proceedings on a patent are concluded?</b>   | Yes. According to 35 USC § 282 (b)(2), invalidity shall be available as a defense to patent infringement.<br><a href="https://www.law.cornell.edu/uscode/text/35/282">https://www.law.cornell.edu/uscode/text/35/282</a>   |
| <b>Does your country/region have, or planning to have, practices in place to ensure that injunctions should not be granted unless the plaintiff can show that it will suffer irreparable injury, the remedies available at law are inadequate to compensate for that injury, the balance of hardship between the parties favors the grant of an injunction, and the public interest would not be disserved?</b>  | Yes. In Ebay Inc. v. Mercexchange, the U.S. Supreme Court held that a four-factor test applies when considering whether to award permanent injunctive relief. “A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.”<br><a href="https://www.supremecourt.gov/opinions/05pdf/05-130.pdf">https://www.supremecourt.gov/opinions/05pdf/05-130.pdf</a>   |
| <b>Does your country/region have, or planning to have, practices in place to prevent abuses in which plaintiffs “forum shop” to select “patentee-friendly” courts in which the plaintiff is more likely to ultimately prevail or at least obtain a preliminary injunction. Such initiatives may include, where practicable and effective, establishing courts with specialized patent expertise or addressing inequalities in venue selection that lead to abusive “forum shopping.”</b> | Yes. In TC Heartland LLC v. Kraft Foods Group Brands LLC, the U.S. Supreme Court held that patent infringement lawsuits will be restricted to the state of incorporation of the accused infringer or where the accused infringer has committed acts of infringement and has a regular and established place of business<br><a href="https://www.supremecourt.gov/opinions/16pdf/16-341_8n59.pdf">https://www.supremecourt.gov/opinions/16pdf/16-341_8n59.pdf</a>   |
| <b>Does your country/region have, or planning to have, practices in place to ensure that, in addition to encouraging fee shifting, require up front bonds or alternatively provide for other sufficient evidence to ensure the plaintiff could pay fee shifting costs should they apply?</b>   | No, the U.S. court systems do not generally have practices that require evidence to ensure a plaintiff could pay fee shifting costs. Fee shifting cases apply if a case is deemed to be exceptional. In Octane Fitness, LLC v. ICON Health & Fitness, the Supreme Court held that a district court can deem a case to be “exceptional” — and thus eligible for fee-shifting — if it is “one that stands out from others with respect to the substantive strength of a party’s litigating position ... or the unreasonable manner in which the case was litigated.” The Supreme Court has instructed courts to consider the totality of the circumstances, including frivolousness, motivation, objective unreasonableness, compensation to the prevailing party, and deterrence of similar conduct in the future.<br><a href="https://www.lw.com/thoughtLeadership/octane-fitness-highmark-decisions-turn-three">https://www.lw.com/thoughtLeadership/octane-fitness-highmark-decisions-turn-three</a> |
| <b>Does your country/region have, or planning to have, practices in place that provide a fair, speedy, and cost-efficient means to challenge patent validity, such as the use of inter partes review (IPR) or other post-grant review procedures?</b>  | Yes. The U.S. Patent and Trademark Office, through its Patent Trial and Appeal Board, provides for inter partes review “to review the patentability of one or more claims in a patent only on a ground that could be raised under [35 USC] §§ 102 or 103, and only on the basis of prior art consisting of patents or printed publications.”<br><a href="https://www.uspto.gov/patents-application-process/appealing-patent-decisions/trials/inter-partes-review">https://www.uspto.gov/patents-application-process/appealing-patent-decisions/trials/inter-partes-review</a>  |
| <b>Does your country/region have, or planning to have, practices in place that require publication of nonconfidential copies of pleadings and opinions, with a process for redacting any sensitive and/or confidential information belonging to the parties?</b>   | Yes. Under Rule 26 of the Federal Rules of Civil Procedure (the rules granting proceedings in U.S. district courts), “A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending. ... The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: ... (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.”<br><a href="https://www.law.cornell.edu/rules/frcp/rule_26">https://www.law.cornell.edu/rules/frcp/rule_26</a>   |

|  |  |
|--|--|
| <p><b>Does your country/region have, or planning to have, practices in place that encourage lawfully permissible collaboration among defendants being sued by the same plaintiff under the same patent, e.g., under a joint defense agreement, to ensure that the best defense possible is developed?</b></p>  | <p>The common interest doctrine holds that if two or more clients with a common interest in a matter are represented by separate lawyers and they agree to exchange information about the matter, a communication which qualifies as privileged that relates to the matter is privileged against third parties. Additionally, according to 28 USC § 1407, multiple patent defendants across different jurisdictions can have cases consolidated into a single case, in a single jurisdiction, against the multiple patent defendants (who are then able to enter into a joint defense agreement).<br/> <a href="https://www.law.cornell.edu/uscode/text/28/1407">https://www.law.cornell.edu/uscode/text/28/1407</a></p>   |
| <p><b>Does your country/region have, or planning to have, practices in place that require the disclosure of the appropriately defined real parties-in-interest in litigation (see, e.g., WSC 2014 Joint Statement recommendation for greater patent ownership transparency in lawsuits)?</b></p>   | <p>Yes. For inter partes reviews, 35 U.S.C. § 312(a)(2) holds that a petition must identify all real parties in interest. Additionally, under the Federal Rules of Civil Procedure Rule 17, “an action must be prosecuted in the name of the real party in interest.”<br/> <a href="https://www.law.cornell.edu/uscode/text/35/312">https://www.law.cornell.edu/uscode/text/35/312</a><br/> <a href="https://www.law.cornell.edu/rules/frcp/rule_17">https://www.law.cornell.edu/rules/frcp/rule_17</a></p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that encourage case management procedures to address discovery burden and cost asymmetries in NPE/PAE litigation (see, e.g., WSC 2014 Joint Statement recommendation to implement appropriate revisions and limits to discovery procedures)?</b></p>  | <p>Judges have some discretion in managing discovery to prevent truly unreasonable requests. The U.S. system is designed to generally permit expansive discovery. According to Rule 26 of the Federal Rules of Civil Procedure, parties may obtain discovery “regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.”<br/> <a href="https://www.law.cornell.edu/rules/frcp/rule_26">https://www.law.cornell.edu/rules/frcp/rule_26</a></p>  |
| <p><b>Does your country/region have, or planning to have, practices in place that provide procedures to challenge the “plausibility” of pleadings in patent cases and to ensure that patent infringement complaints provide sufficient notice to accused infringers (see, e.g., WSC 2014 Joint Statement recommendation for heightened pleading requirements for patent lawsuits)?</b></p> | <p>U.S. pleading rules require a plaintiff to only state a plausible claim, and permits most cases to go forward. The Federal Rules of Civil Procedure, Rule 12, provide that a party “may assert the following defense by motion: ... failure to state a claim upon which relief can be granted.” If a plaintiff is looking to survive a motion to dismiss under that rule, they “must file a complaint that contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'". A claim has "facial plausibility" when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. This "plausibility" standard is "not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id.<br/> <a href="http://www.nlrg.com/legal-content/the-lawletter/bid/95672/civil-procedure-pleading-a-plausible-claim-in-federal-court-the-proper-application-of-the-plausibility-requirement">http://www.nlrg.com/legal-content/the-lawletter/bid/95672/civil-procedure-pleading-a-plausible-claim-in-federal-court-the-proper-application-of-the-plausibility-requirement</a><br/> <a href="https://www.law.cornell.edu/rules/frcp/rule_12">https://www.law.cornell.edu/rules/frcp/rule_12</a></p> |

5<sup>th</sup> Encryption GAMS WorkshopBarcelona, 21<sup>st</sup> of October 2020

9:00 to 13:00

|             |  |                                    |
|-------------|--|------------------------------------|
| 9:00-9:10   | Welcome and Introduction   | GAMS Chair                         |
| 9:10-9:20   | Report from WSC: Encryption and WSC Encryption Principles  | Chair of WSC Encryption Task Force |
| 9:20-12:30  | <p>Presentations &amp; analysis and assessment against the WSC Encryption Principles</p> <p>- Presentation by each GAMS region (5-10 min.)<br/>- Followed by analysis &amp; assessment (20-25 min.)</p> <ul style="list-style-type: none"> <li>• European Union</li> <li>• United States</li> <li>• China</li> <li>• Chinese Taipei</li> <li>• Japan</li> <li>• Korea</li> </ul> | GAMS delegates                     |
| 12:30-13:00 | Conclusion   | GAMS Chair                         |

**Government/Authorities Meeting on Semiconductors (GAMS)  
5<sup>th</sup> Workshop on Regional Support  
2020 GAMS Meeting, Barcelona, Spain**

**Proposed Agenda**

| <b>Time</b>   | <b>Meeting</b>  | <b>Speaker</b>            |
|---|---|---------------------------|
| <b>GAMS Regional Support Workshop</b>   |   |                           |
| From 09h00 to 09h30   | Welcome and Introduction by GAMS Chair  | GAMS Chair                |
|   | WSC Guidelines & Best Practices   | Regional Support TF Chair |
| <b>Analysis and Assessment of Regional Support Programs against WSC/GAMS Regional Support Guidelines &amp; Best Practices</b> |   |                           |
| From 09h30 to 11h45   | <b>Regional Support Session 1:</b><br>Presentations of New programmes:<br><ul style="list-style-type: none"> <li>• European Union (Presentation, Q&amp;A)</li> <li>• Japan (Presentation, Q&amp;A)</li> <li>• Chinese Taipei (Presentation, Q&amp;A)</li> </ul>   |                           |
|   | <b>15 Minutes break</b>   |                           |
|   | <ul style="list-style-type: none"> <li>• China (Presentation, Q&amp;A)</li> <li>• United States (Presentation, Q&amp;A)</li> <li>• Korea (Presentation, Q&amp;A)</li> </ul>   |                           |
| <b>15 minutes</b>   | <b>Break</b>  |                           |
| From 12h00 to 13h00   | <b>OECD report presentation / Q&amp;A</b>   |                           |
| <b>1 hour</b>   | <b>Lunch</b>  |                           |
| From 14h00 to 16h30   | <b>Regional Support Session 2</b><br>Assessment of remaining programs from 1 <sup>st</sup> information exchange:<br><ul style="list-style-type: none"> <li>• European Union (Presentation, Q&amp;A)</li> <li>• Japan (Presentation, Q&amp;A)</li> <li>• Chinese Taipei (Presentation, Q&amp;A)</li> </ul> |                           |
|   | <b>15 Minutes break</b>   |                           |
|   | <ul style="list-style-type: none"> <li>• China (Presentation, Q&amp;A)</li> <li>• United States (Presentation, Q&amp;A)</li> <li>• Korea (Presentation, Q&amp;A)</li> </ul>   |                           |
| <b>15 minutes</b>   | <b>Break</b>  |                           |
| 30 Minutes  | Summary & Conclusions   | GAMS Chair                |
| <b>18:30-19:30</b>  | <b>GAMS Welcome Reception</b>   |                           |



10 June 2020

## WSC supports World Anti-Counterfeiting Day

On 10 June 2020, the Global Anti-Counterfeiting Group (GACG) Network is celebrating the 22nd edition of the World Anti-Counterfeiting Day (WACD). The World Semiconductor Council (WSC) strongly supports the WACD and believes it is a great initiative to highlight the anti-counterfeit measures being taken across industries. The World Anti-Counterfeiting Day enables the organisation of various events focusing on particular problems of counterfeiting & piracy under the umbrella of an international outreach campaign.

In 2012, the WSC has established an Anti-Counterfeiting Task Force amongst the semiconductor industry associations of China, Chinese Taipei, Europe, Japan, Korea, and the United States, with the aim of promoting activities to fight counterfeiting, incl. training, awareness raising, and encouraging purchases from authorised sources. The WSC works closely with governments and authorities on policies and regulations, and encourages domestic, bilateral and multilateral counter-measures and enforcement activities. Such enhanced anti-counterfeiting cooperation activities at the industry level alongside government agencies, customs and law enforcement agencies is instrumental to identify and stop parties involved in manufacturing or trafficking in counterfeit goods.

According to the Organisation for Economic Co-operation and Development (OECD), international trade in counterfeit goods represented up to 3.3% of world trade, or up to USD 509 billion<sup>2</sup>. In view of these staggering numbers, the WSC is convinced by the importance of an initiative such as the World Anti-Counterfeiting Day, and believes it to be a great way of highlighting the common cause of fighting counterfeiting – industry sectors alongside well-informed customers, and national enforcement authorities.

### About WSC

---

<sup>2</sup> Figures for 2016. Source: Organisation for Economic Co-operation and Development (OECD)–European Union Intellectual Property Office (EU IPO) (2019), *Trends in Trade in Counterfeit and Pirated Goods*  
<https://euipo.europa.eu/ohimportal/en/web/observatory/trends-in-trade-in-counterfeit-and-pirated-goods>

*The World Semiconductor Council is a cooperative body of the world's leading semiconductor industry associations – consisting of the Semiconductor Industry Associations in China, Chinese Taipei, Europe, Japan, Korea and the United States – that meets annually to address issues of global concern to the semiconductor industry. The WSC also meets annually with the governments and authorities of the six regions to convey industry recommendations. The WSC is dedicated to the principle that markets should be open and competitive and works to encourage policies and regulations that fuel innovation, propel business and drive international competition in order to maintain a thriving global semiconductor industry.*

More information on the WSC is available at <http://www.semiconductorcouncil.org>

**For further information, please contact:**

Hendrik Abma  
Director General  
European Semiconductor Industry Association (ESIA)  
Tel: +32 2 290 36 60